

**STATE APPEAL BOARD CLAIM FORM
AND AFFIDAVIT**

CLAIM NUMBER

(for Appeal Board use only)

Submit to:

STATE APPEAL BOARD

Department of Management

State Capitol, 1007 E. Grand Ave, Room 13

Des Moines, Iowa 50319

DATE RECEIVED: _____

(for Appeal Board use only)

Directions: A TORT CLAIM **MUST** submit 3 complete *sets* of documents, an original form with any attachments and two claim form copies with attachments for **EACH**, CLAIMANT and NOTARY PUBLIC must sign. A GENERAL CLAIM **MUST** submit 2 complete sets of documents, an original and one copy, with attachments for **EACH**. Please see specific directions on the back of this form that pertain to the type of claim you are filing.

1. NAME OF CLAIMANT (please print full name)

Jerry R. Foxhoven

2. DATE OF BIRTH

3. ADDRESS OF CLAIMANT (Street, City, State, Zip Code)

4. TELEPHONE: HOME _____

BUSINESS () _____

Email Address _____

5. CLAIMANT'S SOCIAL SECURITY NUMBER

OR

FEDERAL TAX IDENTIFICATION NUMBER

6. IDENTIFY STATE AGENCY OR DEPARTMENT INVOLVED

Department of Human Services

7. LOCATION OF ACCIDENT/INCIDENT

<For Tort Claims Only>

Des Moines, Iowa

8. DATE/TIME OF ACCIDENT/INCIDENT

17-Jun-19

9. SELECT TYPE OF CLAIM: place an X in the box (A SEPARATE claim must be filed by each claimant for each of the three types of claims defined below)



(1) GENERAL _____ AMOUNT OF CLAIM

FOR TORT CLAIMS, INDICATE ONE OF THE FOLLOWING:

(2) TORT CLAIM AGAINST THE STATE

PROPERTY DAMAGES \$ _____

(3) TORT CLAIM AGAINST STATE EMPLOYEE(S)

PERSONAL INJURY \$ 1,000,000.00

Give employee(s) name and department

WRONGFUL DEATH \$ _____

10. BASIS OF CLAIM (Please provide all the information required on the reverse side of this form. Attach separate sheets if necessary.)

See Attachment "A"

11. NAME, ADDRESS, TELEPHONE # AND EMAIL ADDRESS OF ATTORNEY, IF ONE HAS BEEN RETAINED IN THIS CASE.

Thomas J. Duff, 4090 Westown Parkway, Suite 102, West Des Moines, Iowa 50266, tom@tdufflaw.com

12. ATTORNEY'S SOCIAL SECURITY NUMBER

OR

FEDERAL TAX IDENTIFICATION NUMBER

I, the claimant, being duly sworn upon oath depose and state that I have read the supplied information and the same is true and correct to the best of my belief.

Subscribed and sworn to before me this

27th

day of

August

, 20

19

CLAIMANT'S SIGNATURE

Wendy J. Hart

NOTARY PUBLIC SIGNATURE

My commission expires

10/2/21



WENDY J. HART
COMMISSION NO. 192807
MY COMMISSION EXPIRES

10/2/21

ATTACHMENT "A"

PARTIES

1. At all times material hereto, Claimant Jerry Foxhoven ("Foxhoven") was a resident of Clive, Polk County, Iowa.

2. At all times material hereto, Defendant State of Iowa was a sovereign state as defined in the Iowa Code with its principal place of business in Des Moines, Polk County, Iowa.

FACTUAL BACKGROUND

3. On June 17, 2017, Foxhoven was appointed by Governor Reynolds to serve as the Director of the Iowa Department of Human Services ("DHS").

4. On November 17, 2017, Mike Randol ("Randol") was appointed as the Director of the Iowa Medicaid Enterprise ("IME").

5. Randol transitioned to Director of the IME from his post with the Kansas Department of Health and Environment, where he served as the State Medicaid Director.

6. At the time Randol began as Director of the IME he possessed comprehensive understanding of Medicaid and managed care, but was not familiar with Iowa's insurance companies, hospitals and various health care providers.

7. Foxhoven, in consultation with Governor Reynolds' staff, agreed that Chief of Staff Paige Thorson ("Thorson") could provide valuable assistance to Randol during the State's transition to a managed care system.

8. On February 2, 2018, Foxhoven and Jake Ketzner (then Governor Reynolds Chief of Staff) executed a Memorandum of Understanding ("MOU) which stated that Thorson "shall provide strategic support for the Department as agreed to by each Office of the Governor and the Department."

9. The MOU executed on February 2, 2018 provided that DHS would be invoiced based on 69% of Thorson's combined salary and benefit costs from December 26, 2017 to June 30, 2018.

10. On December 3, 2018, Foxhoven and Ryan Koopmans (then Governor Reynolds Chief of Staff) signed a second MOU which again provided that Thorson “shall provide strategic support for the Department as agreed to by each Office of the Governor and the Department.”

11. The MOU executed by Foxhoven on December 3, 2018 provided that DHS would be invoiced based on 69% of Thorson’s combined salary and benefit costs from July 1, 2018 to June 30, 2018.

12. In February/March 2019, as fiscal year 2019 drew to a close, Foxhoven had a telephone conversation with Chief of Staff Gongol about Thorson’s future role at DHS.

13. During this phone conversation, Foxhoven told Gongol that due to Thorson’s support during the last two fiscal years that Randol was now adequately familiar with Iowa’s health care network.

14. Foxhoven also told Gongol during their phone conversation that Thorson was no longer performing duties that furthered the mission of DHS and that he did not believe DHS should continue paying her salary.

15. Foxhoven believed that the issue was resolved when the Iowa legislature appropriated an additional \$200,000 in DHS funding for two new positions.

16. At the beginning of June 2019 Foxhoven spoke with Gongol again to confirm that DHS would not continue paying any portion of the Thorson’s salary in the next fiscal year.

17. Gongol told Foxhoven that she was expecting DHS to continue paying a portion of Thorson’s salary. Foxhoven questioned the legality of such an arrangement because Thorson was no longer performing DHS duties, but instead simply acting as Deputy Chief of Staff.

18. Foxhoven requested that Gongol ask Langholz for his opinion concerning the legality of continuing to pay Thorson with DHS funds. Gongol refused stating that she was not going to involve Langholz in the matter.

19. Foxhoven told Gongol that he intended to ask the assistant attorney generals assigned to DHS for a legal opinion. Foxhoven explained that all three assistant attorney

generals were involved in a multi-week federal court lawsuit and that the trial would conclude on June 18, 2019.

20. Foxhoven told Gongol that he was going to send an email to the assistant attorney generals assigned to DHS on June 18, 2019 requesting a legal opinion concerning the legality of DHS continuing to pay Thorson's salary.

21. On June 17, 2019, Gongol and Langholz terminated Foxhoven before he could send the email requesting a legal opinion concerning the legality of DHS continuing to pay Thorson's salary.

22. Foxhoven was given no reason for his sudden and immediate termination other than stating that they "we're going in a different direction."

23. Gongol and Langholz demanded the immediate return of all of Foxhoven's state issued equipment and told him not to return to his office.

24. After Foxhoven was terminated, DHS was refunded two salary payments made to Thorson in April 2019 and May 2019.

COUNT I

WRONGFUL DISCHARGE IN VIOLATION OF PUBLIC POLICY AGAINST THE STATE OF IOWA

COMES NOW the Claimant Jerry Foxhoven and for his cause of action against Defendant State of Iowa states as follows:

25. Foxhoven realleges and incorporates by reference the allegations contained in paragraphs 1 through 24 as if fully set forth herein.

26. The State of Iowa terminated Foxhoven in order to prevent him from enforcing his statutory right to disclose information he reasonably and in good faith believed constituted a violation of the law, mismanagement, a gross abuse of funds or abuse of authority under and pursuant to Iowa Code §70A.28(1).

27. The State of Iowa terminated Foxhoven in order to prevent him from disclosing information he reasonably and in good faith believed constituted a violation of the law,

mismanagement, a gross abuse of funds or abuse of authority under and pursuant to Iowa Code §70A.28(2).

28. The State of Iowa terminated Foxhoven because he refused to engage in illegal activity; that is DHS continuing to pay Thorson's salary despite the fact that she was no longer providing services that furthered the business of DHS.

29. The State of Iowa terminated Foxhoven by interfering with and preventing him from consulting with or seeking advice from the Iowa Attorney General's office concerning the legality of DHS continuing to pay Thorson's salary.

30. Foxhoven's termination violates well established public policy of the State of Iowa as defined by statute, regulation, and judicial decision. Said public policy is undermined and jeopardized by the circumstances of this case.

31. As a proximate cause of the State of Iowa's termination of Foxhoven's employment, he has suffered and will continue to suffer substantial loss of earnings, insurance benefits, retirement benefits and other employee benefits; and has suffered and will continue to suffer mental anguish and emotional distress.

32. At the time of his termination, Foxhoven was earning an annual salary of \$154,300.00 per year plus fringe benefits including health and dental insurance and IPERS.

33. Foxhoven has not found replacement income and has a continuing and ongoing monthly loss of wages and benefits of not less than \$16,073.00 per month.

WHEREFORE, Claimant Jerry Foxhoven prays for the following relief:

- (a) That the Board award Claimant compensatory damages;
- (b) That the Board order Defendants to make whole the Claimant by providing him with appropriate past and future lost earnings and benefits with pre-judgment interest, and other affirmative relief;
- (c) That the Board award Claimant the costs and attorney fees incurred in prosecuting this action; and
- (d) That the Board award Claimant such additional and further relief as it deems just and proper.